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Human rights: implementation of the United Nations Declaration on the Rights of Indigenous Peoples

Summary and recommendations of the report of the mission of the Permanent Forum on Indigenous Issues to Paraguay**

Summary

In response to a request from the Government of Paraguay, the Permanent Forum on Indigenous Issues organized a multi-agency mission to Asunción and Filadelfia in April 2009 to verify complaints regarding forced labour and servitude among communities of Guaraní peoples and to draw up proposals and recommendations to ensure that the fundamental rights of indigenous peoples are respected. The full report of the mission was presented to the Government on 31 August 2009. The present report contains a summary of the full report.

* E/C.19/2010/1.

** The full report can be found on the website of the Permanent Forum on Indigenous Issues at http://www.un.org/esa/socdev/unpfii/en/news.html.

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I. Introduction

1. In response to a request from the Government of Paraguay, the Permanent Forum on Indigenous Issues organized a multi-agency mission to Asunción and Filadelfia in April 2009 to verify complaints regarding forced labour and servitude among communities of Guarani peoples and to draw up proposals and recommendations to ensure that the fundamental rights of indigenous peoples are respected. The mission was composed of the chairperson of the Permanent Forum, Victoria Tauli-Corpuz; members Lars Anders-Baer, Bartolomé Clavero and Carlos Mamani; and two officials of the Department of Economic and Social Affairs of the United Nations Secretariat, as well as experts from the United Nations Development Programme, the Food and Agriculture Organization of the United Nations (FAO), and the International Labour Organization (ILO) in both Paraguay and Peru.

2. The mission's mandate was established in a recommendation of the Permanent Forum at its seventh session, in May 2008 (see E/2008/43, para. 156), and confirmed in an invitation from the Government of Paraguay on 30 October 2008.

3. The present report is a summary of the full mission report, which is based on interviews conducted by the mission, inspections, data from the General Directorate of Statistics, Surveys and Censuses, documents of ILO and the United Nations Children's Fund (UNICEF) and materials from indigenous peoples' organizations and international and domestic non-governmental organizations (NGOs). Although the mission centred on the situation of the Guarani peoples, it also met with other indigenous communities and concluded that the problems encountered and the recommendations offered were relevant to several indigenous peoples in the Chaco region of Paraguay.

4. The mission visited communities in the Chaco region and met with representatives of indigenous organizations and of the Rural Association of Paraguay, the Ministers or Vice-Ministers of Education and Culture, Justice and Labour, Foreign Affairs, Agriculture and Livestock, and the Environment, representatives of commissions of Congress on human rights and indigenous affairs, the Supreme Court of Justice and the Office of the Public Prosecutor. The Permanent Forum is grateful for the trust placed in the mission by individuals, organizations and institutions.

5. At the eighth session of the Permanent Forum, members orally presented the recommendations contained in the present report. On the basis of the presentation, the Permanent Forum thanked the Governments of Paraguay and Bolivia for their invitations, welcomed the mission, which had been carried out pursuant to the Forum's recommendation regarding the situation of forced labour in Guarani communities at its seventh session, and decided to publish the reports of the mission as documents of the Forum. The Forum urged United Nations country teams to follow up on the recommendations and suggested to the relevant Governments that they report on the implementation of the recommendations at the ninth session of the Forum (E/2009/43, para. 94).

Note: Investigations into human rights violations, particularly when the events are recent, can carry a great deal of risk for the researchers as well as for those who provide information and can result in violence, imprisonment or disappearance for individuals and institutions that defend basic human rights. For this reason, the witnesses quoted herein have been kept anonymous. The Permanent Forum wishes to express its appreciation for the efforts of individuals and institutions which, by providing information, contributed to the mission.

II. Legal context

A. International law

6. Paraguay, by ratifying and supporting a series of international treaties and declarations of intergovernmental bodies, has undertaken to use its power to protect and give effect to human rights. This means not only ensuring that its officials comply with human rights standards, but also acting with due diligence to address abuses committed by non-State authorities and individuals. The principle of due diligence includes the obligation to prevent human rights violations, investigate them and punish them when they occur.

7. The United Nations Declaration on the Rights of Indigenous Peoples, adopted by the General Assembly in September 2007 (see resolution 61/295), sets out minimum standards for the recognition and protection of the rights of indigenous peoples in various contexts throughout the world. It includes provisions on the right to self-determination (arts. 3 and 4) and the right of indigenous peoples to own their lands and to recover their territories (arts. 8.2 (b), 25, 26 and 28). The Declaration calls upon States to protect indigenous children from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education or to be harmful to the child's health or physical, mental, spiritual, moral or social development (art. 17, para. 2) and provides that indigenous individuals have the right not to be subjected to any discriminatory conditions of labour, employment or salary (art. 17, para. 3).

8. ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries recognizes that indigenous and tribal peoples have a wide range of rights, including rights to land and territory, access to natural resources, health, education, vocational training, conditions of employment and contacts across borders, and gives special attention to the protection of freedom of work, including an explicit prohibition of servitude and forced labour.

9. The Universal Declaration of Human Rights (art. 4), the International Covenant on Civil and Political Rights (art. 8) and the American Convention on Human Rights (art. 6) proscribe slavery and servitude. ILO Convention No. 29 concerning Forced or Compulsory Labour prohibits all forms of such labour.

B. Domestic law

10. The Constitution of Paraguay prohibits slavery, personal servitude and trafficking in persons (art. 10). It also establishes that everyone has the right to protection of their freedom and security and that no one may be compelled to do what is not ordered by law or be prevented from doing what is not prohibited by law (art. 9). The labour code establishes that work is a right and a social duty and enjoys the protection of the State. It may not be regarded as a commodity. It demands respect for the freedoms and dignity of those who perform work and shall be carried out in conditions that ensure life, health and an economic level consonant with the responsibilities of the working father or mother. No discrimination shall be exercised against workers for reasons of race, colour, gender, religion, political opinion or social standing. Concerning forced labour, the labour code stipulates that all work must be paid, that a contract will be void if it establishes a wage lower than

that paid to another worker in the same enterprise for work of equal effectiveness or sets a wage lower than the legal minimum; if it requires one day of work more than is permitted by the labour code; or if it entails a direct or indirect obligation to buy goods or food from a store, business or place determined by the employer (art. 47). However, as is demonstrated in the present report, the situation of indigenous peoples in the Chaco reveals serious violations of both domestic laws and international treaties signed and/or ratified by Paraguay.

III. Forced labour in indigenous communities in the Paraguayan Chaco

> Once we went to work for 800,000 guaranies. We thought that we would have a lot of money to live with, but I got nothing. The *provista* (basket of food and basic items) never lasted till the end of the month so we had to go for a few days without food. If we fell sick, we couldn't go out, we were like prisoners.
>
> Indigenous man in the Chaco, April 2009

> The Guaraní were the original settlers of these lands, and now you see we are the most marginal. Before we Guaraní were free, we were rich, and now we are treated like dogs.
>
> Indigenous teacher in the Chaco, April 2009

> Why do the Mennonites put the indigenous to work? Because they are docile, they don't know the law, they don't demand social security. If an indigenous person complains, they fire him. There are many more indigenous people. And when they grow old and slow, they are thrown out without compensation, and then they can hire someone younger.
>
> Government official, April 2009

11. The existence of forced indigenous labour in the Chaco region has been extensively documented in investigations and reports of NGOs, including Anti-Slavery International and ILO, which in July 2005 issued a report on debt bondage and marginalization, finding that some 8,000 indigenous people were in a situation of servitude in the Paraguayan Chaco.

12. In June 2008, the Government of Paraguay was called upon to give explanations before the Conference Committee on the Application of Standards of the International Labour Conference regarding systematic non-compliance with ILO Convention No. 29 following repeated comments by monitoring bodies. The Committee again urged the Government to put an end to debt bondage among the indigenous communities of the Paraguayan Chaco and other affected parts of the country. In early 2009, the Government took an important step towards addressing the issue by forming an inter-agency commission on fundamental rights and forced labour, which seeks to eradicate violations of fundamental rights in the labour sector.

13. The forced labour of indigenous peoples takes place in the context of the complex history and political economy of the Paraguayan Chaco. The Chaco — the "last frontier" of the Americas — is a region of late development where the lands were parcelled out to religious groups, primarily Mennonites from Europe; the lands

were "given" with the indigenous communities still living on them, and those communities were subsequently used as low-cost labour on the new ranches. Observing the thriving activities of the Mennonites, other Paraguayan ranchers moved to the Chaco, continuing the tradition of expropriating indigenous communities and exploiting indigenous labour.

14. The indigenous communities of the Chaco are consequently deprived of land and resources in their own territory. They live in extreme poverty and are compelled to support themselves by working for the Mennonite colonies and Paraguayan estates under precarious conditions, with no guarantee of stability, for low wages, without health insurance when they stop working and with no trade union rights. This situation is due in part to the weak presence of the State in the Chaco, together with the development model and the considerable power of the Mennonite communities in the region. As a result, indigenous servitude is entrenched in the Chaco, masked by the local and national authorities.

15. The Paraguayan State is reduced to bare essentials on account of its manifest lack of resources. Paraguay is one of the few places in the world where an income tax, the main mechanism for redistributing wealth, does not exist, and for this reason the State is unable to develop public policies for the bulk of its citizens. There is no land registry in Paraguay, which has made it easier for settlers to expropriate the land of indigenous communities.

16. According to studies carried out by the General Directorate of Statistics, Surveys and Censuses of Paraguay in 2008 and 2002, indigenous peoples represent 2 per cent of the overall population of Paraguay and 31 per cent of the population in its western region, which includes the Chaco. Indigenous peoples were not recognized in the Constitution until 1992, when a new Constitution identified indigenous peoples as "ethnic groups whose culture existed before the formation and constitution of the State of Paraguay" (art. 62). In spite of such recognition, official figures continue to reveal an alarming situation, marked by a high illiteracy rate, affecting 40 per cent of the indigenous population, with an average of three years' schooling for indigenous children aged 10 and over, as compared to eight years for the non-indigenous population. The problem is more acute in rural areas (53.3 per cent) than in urban areas (29.2 per cent); Guaraní communities have the worst illiteracy rates (45.5 per cent). Most indigenous people typically live in a modest earth-floor building with a straw or corrugated iron roof and wooden or adobe walls, with a small patch of land on which they grow food for themselves. Only 3.5 per cent of indigenous people have a brick house. The poor quality of housing is a major medical problem: the incurable Chagas' disease, which affects half the indigenous population, is transmitted by an insect that lives in this kind of housing. Only 5.9 per cent of indigenous homes have a bathroom or access to drinking water, and only 21 per cent have electricity, with most homes being lit by candles.

IV. Summary of the findings of the mission

17. The full report of the mission contains analyses of the situation of indigenous peoples in the Chaco region with respect to violations of different rights (forced labour, child labour, poor working conditions, the loss of, and consequent lack of access to, lands, the inadequate provision or complete lack of social services and

restrictions on the right to freedom of association). The conclusion is that a system of forced labour exists in the Chaco region, along with grave violations of international instruments supported or ratified by Paraguay. Because of those violations, as well as breaches of the Paraguayan labour and criminal codes, the Government must, as a matter of urgency, resolve the situation of the Guaraní and other indigenous peoples in the Chaco region with regard to the following issues noted by the mission, as set out below.

A. Existence of forced labour and servitude among indigenous men and women

> I worked in [place name omitted]; I was in great need and I drove a tractor for two months. After the first month, I was already in debt. I got paid only 450,000 guaranies a month.
>
> Indigenous man in the Chaco, April 2009

> The employers bring the indigenous workers to their lands and promise them work for a year or two, but when sometimes they work for six months without being paid, as the communities don't have enough food to eat, the Guaraní go on working for the employer.
>
> Interview with a Government official, April 2009

> The indigenous don't work, they just do what they like, they don't understand our hours or the concept of time, and they never understood the concept of work because they lived off the land ... How can we speak of forced labour when they're not even capable?
>
> Official of the national judicial system, April 2009

18. In Paraguay, forced labour comes into being in one of two ways. One way is when work that has been done is not paid for: this is a direct case of forced labour, and the mission received many reports to that effect. Another way is *empatronamiento* (being treated as part of the employer's property), servitude or *enganche* (improper hiring practices) of families or individuals based on accommodation on the ranch or on debts. Wages are very low and do not cover the basic needs of the families of indigenous workers, who live in extreme poverty. The indigenous people contract debts with their employers, who advance them their pay to meet the cost of building or fixing up a modest home, sending children to school, or simply buying food and clothing. The mission also received allegations of such cases as these. The situation is reportedly particularly bad for women in domestic service: the private sphere in which they perform their long days of work is often a world of subjection and abuse, and the mission received reports that women working in domestic service frequently do not receive monetary compensation, but merely bed and board.

B. Child labour

> Child labour is so widespread that in rural areas it seems normal to people that children work doing menial tasks. For example, if women have no one to look after their children, they take them out into the fields and the children help

> them all day long, but it isn't seen as work. Children are considered to work only when they get paid.
>
> United Nations official, April 2009

19. According to the second census of indigenous people, conducted by the General Directorate of Statistics, Surveys and Censuses in 2002, 20 per cent of indigenous children and youth between the ages of 10 and 11 work, as do 31 per cent of indigenous children and youth between the ages of 12 and 14, and 51 per cent between the ages of 15 and 19. The number of boys is twice that of girls. ILO reports that in 2007, 53 per cent of indigenous and non-indigenous children between the ages of 5 and 17 were working, mainly in domestic service and agriculture. The same report notes situations of forced labour among girl servants and of prostitution. ILO, UNICEF and the Inter-American Development Bank have established public information campaigns and Government support programmes in an attempt to eliminate such child labour practices, but greater effort is needed.

C. Inadequate working conditions

> The bosses don't want to give us a day off ... Not long ago a Guaraní worker asked for a day off and he was fired. He milked the cows; the milkmen never get a day off.
>
> Indigenous man in the Chaco, April 2009

20. In the Chaco region there is only one office of the Ministry of Justice and Labour, established in September 2008, and, because of the very small number of staff (two) and the lack of a budget for transport, no inspections are conducted. Paraguayan law establishes a 48-hour work week, with one day of rest; between 12 and 30 days of vacation; annual extra pay equivalent to one month of work; and social security, including medical care and a retirement pension. Most of the indigenous interviewees said that their employers did not comply with the law: some reported that they did not have rest days and the idea of extra pay, vacations and retirement pension was practically unknown to them given that the majority of indigenous people are hired on a temporary basis and sometimes by the day. It was reported that female domestic workers, in particular, usually have 12-hour work days. Unlike other Latin American countries, which rely on non-contributory pensions that play a significant role in relieving the conditions of old age, in Paraguay senior citizens receive a pension only if they have managed to make regular contributions. Older indigenous people generally find themselves in a very vulnerable situation, with no pension, and when they reach old age, employers no longer hire them and they remain without an income. The mission also received allegations of indigenous workers receiving wages far below the minimum wage. This is consistent with the finding of the General Directorate of Statistics, Surveys and Censuses that the average monthly income of the indigenous population in 2008 was 778,000 guaranies, far below the average wage of 1,193,000 guaranies for the non-indigenous population and the minimum wage of 1,341,775 guaranies.

D. Restrictions on freedom of association

> We would like to organize the Guarani workers into trade unions, but the authorities are against it, for fear of the Chaco being contaminated by ideas from outside. Once there was a strike, and the employers fired the organizers. They also tried to set up a trade union for workers in the frozen meat industry, and the employers fired them all.
>
> Government official, April 2009

21. The mission received allegations of abuses of freedom of association, including reports that the organization of indigenous workers has repeatedly been the target of repressive action, ranging from strong words and threats to the dismissal of persons seeking to form a trade union. It was reported that associations of indigenous persons, such as the Coordinating Body for the Self-Determination of Indigenous Peoples, have likewise not been well received by landowners. In addition, there are domestic legal rules that do not respect the principles of freedom of association, and the ILO monitoring bodies have for many years called upon the Government to take without delay the steps necessary to bring its national legislation into line with ILO Convention No. 87 concerning Freedom of Association and Protection of the Right to Organize.

E. Land

> We have many problems in getting food. We are not allowed to hunt on many estates where there is a bit of woodland. We look for work and many Mennonite and Paraguayan employers take us to their estates, but few of them treat their workers well. If our people fall sick, they don't look after then, they just leave them to their fate. They don't feed us properly and they don't pay us much either. Some get work with the missionaries, and otners live by trying to do something with the little plots of land given to us by the Government. But our lands are steadily shrinking and they don't return the territory they stole from us, which by our laws is ours. We feel cornered in on these small properties surrounded by the big cattle ranches owned by rich and powerful bosses.
>
> Indigenous man in the Chaco, April 2009

> Act No. 904 of 1981 established that each indigenous family was to receive a minimum of 100 hectares, but it didn't happen.
>
> Government official, April 2009

22. According to the national indigenous census, there are 412 indigenous communities in Paraguay, of which 185, or 45 per cent, do not yet have a legal, permanent settlement. The settlement of indigenous land claims is challenged by slow action of the State, lack of funds to buy land and, significantly, the fact that there is still no system for registering and recognizing ownership of land in Paraguay. The establishment of such a registry is necessary and will provide a basis for reviewing these severe political constraints on land awards for indigenous people.

23. Violations of indigenous peoples' rights to their ancestral lands have also attracted international attention. In 2005 and 2006, the Inter-American Court of Human Rights ruled, in the case of the Yakye Axa and Sawhoyamaxa communities, that the Government should return the ancestral lands to the aforesaid communities within three years, establish a fund for development projects in the communities and provide access to education, health and food during the three-year transitional period. The judgements, however, have yet to be implemented.

F. Weak presence of the State and lack of access to health and other public services

> It's been two years since a doctor has come to the community. My brother died in my arms because we couldn't get him to a doctor.
>
> Indigenous man in the Chaco, April 2009

24. Medical research on indigenous communities carried out in 2008 and 2009 reveals a high prevalence of malnutrition among children and adolescents as well as a high incidence of pulmonary tuberculosis and Chagas' disease. There is also a high incidence of ectoparasites, scabies and pyodermitis among indigenous groups. Specific studies on Chagas' disease in the Chaco region (2003) among both indigenous and non-indigenous people reveal an incidence of this serious affliction bordering on 53.2 per cent, seven times the national rate. Despite the prevalence of disease, 87.8 per cent of the indigenous population have no access to medical services. Only 2 per cent are covered by public medical insurance, and the remaining 10 per cent by another type of insurance, such as Ayuda Mutual Hospitalaria, a contributory insurance for indigenous peoples, which the mission found to have discriminatory effects.

25. Indigenous children of the Chaco region have inadequate access to education. Of the 164 indigenous communities living in the departments of Boquerón and President Hayes, 19 per cent do not have access to primary school. Only 3 per cent of schools provide intermediate education. Schools are in Mennonite hands: the Ministry either pays the teachers in Mennonite schools or Mennonite NGOs build and run the schools, in the absence of an adequate public policy for the reasons mentioned above. While 58 per cent of teachers are indigenous, 30 per cent of them have had only a primary education. Overall, 45.5 per cent of Guaraní are illiterate.

G. The critical situation of indigenous communities as regards food insecurity

> Now, because of the drought, there is no harvest, so many indigenous people have to emigrate, and employers take advantage of their vulnerability.
>
> Government official, April 2009

26. According to a study reported by FAO in 2004, there are more than 800,000 undernourished people in Paraguay, representing 14 per cent of the total population. Chronic malnutrition affects 11 per cent, or some 645,000 people, and acute malnutrition 5 per cent. While Paraguay has a high capacity for food production, malnutrition has been aggravated by the abandonment in the past decade of the

traditional diversified production system of small farmers, which ensured their food security, by the low returns from the cash crops traditionally grown by such farmers and by the shortage of water.

27. The Government is considering reforming and expanding the Paraguayan Institute of Indigenous Affairs (INDI), attaching it to the presidency and giving it a mandate for inter-ministerial coordination. The National Plan for Food and Nutritional Sovereignty and Security of Paraguay (PLANAL) has also been launched requiring the joint and coordinated action of all stakeholders, public and private, whose work is related to the agricultural sector, as well as those who depend on it. The Ministry of Agriculture therefore has an agrarian outreach office in the Chaco, with three technicians. Both the reform of INDI and the implementation of PLANAL seem to be necessary and correct steps to support indigenous communities and must be carried out as a matter of urgency in view of the severe food crisis.

V. Recommendations of the Permanent Forum

A. Free, prior and informed consent

28. All branches of the Government of Paraguay — legislative, executive and judicial — and all its constitutional agencies, such as the Ombudsman's Office, must take full responsibility for ending practices of forced labour and should consult and cooperate with indigenous peoples to institute plans of action to end forced labour practices and discrimination against indigenous peoples.

29. All recommendations included in the present report should be implemented with the free, prior and informed consent of the indigenous peoples affected.

B. Institutional strengthening

Governance in the Chaco region

30. In accordance with its constitutional jurisdiction, the Government of Paraguay must ensure the adequate presence of State institutions in the zones affected by forced labour and child labour practices, including by strengthening the presence of the District Attorney, the Ombudsman, the Ministries of Justice and Labour, Education and Culture, and Public Health and Well-Being. This includes increasing the number of well-trained technical personnel (including indigenous individuals) in the various ministries, ensuring that public services are provided to indigenous communities and ensuring adequate and sustained budgetary allocations.

31. All such Government endeavours must be implemented on the basis of the free, prior and informed consent of indigenous peoples through the reformed INDI or otherwise. The Government of Paraguay must ensure that local authorities and institutions in the Chaco region do not make decisions on indigenous peoples' issues without their due consent.

Ministry of Justice and Labour: labour inspections

32. The existence of forced labour practices involving indigenous peoples in Paraguay has been well documented. The Government must urgently gather data

identifying the employers involved in such practices for all legal purposes, including criminal liabilities.

33. The Government must provide sufficient resources to the Department of Labour to carry out adequate and timely labour investigations within the Chaco region. Resources provided must include salaries for inspectors, computers and Internet access, vehicles and equipment.

34. Labour inspectors should receive training on human rights, including labour rights, women's rights, children's rights and the human rights of indigenous peoples, including those affirmed by the United Nations Declaration on the Rights of Indigenous Peoples. United Nations agencies in Paraguay should offer technical support and training in this regard.

35. The Ministry of Justice and Labour must ensure the integrity of labour inspectors through the enforcement of strict oversight mechanisms pertaining to conflict of interest.

36. The Government must ensure the safety of labour inspectors and their free access to all lands.

37. The Government should create an accessible system for complaints regarding labour abuses.

38. In instances where labour inspectors document practices in violation of domestic or international law, their findings should lead to swift legal redress.

39. The Ministry of Justice and Labour should modify the composition of tripartite commissions, currently comprising public administration, labour organizations and employer organizations. Such commissions must also include indigenous representation in accordance with the requirements of ILO Convention No. 169 and the Declaration.

40. The Ministry of Justice and Labour must ensure that indigenous workers are not paid less than the minimum wage and enjoy the social services and benefits on an equal footing with non-indigenous workers.

41. It should be considered that the final will of indigenous peoples who are subjected to forced labour may not be to become hired workers in the haciendas, but to recover their land and resources.

Law enforcement: police, prosecutors and judges

42. In accordance with their constitutional jurisdiction, the Government must ensure the integrity of law enforcement agencies, prosecutors and courts through the enforcement of strict oversight mechanisms pertaining to conflict of interest. Police forces in the Chaco region should be led by officers who will remain neutral in carrying out their official duties.

43. The Government should ensure that members of the police, prosecutors and judges in the Chaco region are given training on human rights, including labour rights, women's rights, children's rights and the human rights of indigenous peoples, including those affirmed by the Declaration. United Nations agencies in Paraguay should offer technical support and training in this regard.

44. Indigenous communities must have access to legal services to protect and defend their interests on a collective basis.

45. Prosecutors should vigorously prosecute cases of human rights abuses, including labour abuses, against indigenous peoples and their defenders and should be sufficiently resourced to ensure that the cases are treated with the appropriate priority and processed without undue delay. Any decision not to proceed with a case, together with the rationale for the decision, should be promptly communicated to the person who reported the abuse.

46. The Judicial Branch, the Public Ministry and the Ombudsman should uphold and guarantee the rights of indigenous peoples as recognized in the Constitution, treaties and international human rights law.

Institute of Indigenous Affairs

47. The structure and the performance of INDI should be reformed to be in compliance with international instruments on the human rights of indigenous peoples, and particularly with regard to the right to free, prior and informed consent set out in the Declaration. The reformed INDI should not be located within a government ministry, but rather should be placed in the Office of the President or be autonomous, with the authority to influence the policies of all the ministries. This institutional reform should be designed with the participation of all involved stakeholders, taking especially into account the views of indigenous peoples on the matter. The mission is encouraged by the plan of the Government of Paraguay to undertake such reforms and urges Congress to support it by adopting the necessary legislative amendments.

48. Once reformed, INDI and the newly formed Commission to Eradicate Forced Labour should, in cooperation and consultation with indigenous peoples, formulate and promote a plan of action on forced labour with the capacity to address the root causes of forced labour, especially those related to land tenure.

49. The in-depth reform of INDI must not pre-empt or thwart the freedom of indigenous organizations and peoples to act and make decisions exclusively by themselves. Their right to free, prior and informed consent must always be respected.

C. Financing

50. The Congress and the Government of Paraguay must ensure adequate public funding and budgetary allocations to implement the recommendations contained in the present report.

51. The United Nations system should provide assistance on indigenous issues in Paraguay, including the abolition of forced labour.

52. The mission calls upon the donor community, including bilateral donors, to support initiatives towards the implementation of these recommendations in Paraguay.

D. Land reform and food security

53. The Government of Paraguay should create, as a matter of urgency, a land registry for the Chaco region. A deadline should be established for its completion, and it should be reviewed to assess the legitimacy of existing land titles, particularly in cases of land claimed by indigenous communities.

54. As lands have been taken from indigenous peoples with neither consent nor compensation, where indigenous land claims are challenged, the burden of proof should fall to the non-indigenous party with regard to the land in question.

55. The return of lands to indigenous peoples, and particularly to communities that have no land or only small parcels, should be part of judicial processes consistent with indigenous peoples' right to the recovery of their land. In addition, negotiations with the Mennonite society and organizations of cattle farmers of the region carried out by the Government, together with indigenous representatives, are advisable. Negotiations should be undertaken on the basis of principles of human rights and equality with the conviction that it is possible to create an intercultural society that is more just, in which all citizens, including indigenous and non-indigenous peoples, can develop peacefully.

56. The Government should implement the decisions of the Inter-American Court of Human Rights regarding the situations of the Yakye Axa and Sawhoyamaxa indigenous communities, which, since being displaced from their traditional lands, have been living in precarious conditions with irregular water and food supplies and inadequate medical care. The mission recognizes that President Fernando Lugo Méndez has taken initial steps with regard to implementation of the Yakye Axa case, but calls for the full and immediate implementation of the decisions.

57. Agrarian reform should be based on integrated and participatory management at the local, regional and national levels and should be undertaken jointly with PLANAL in the Chaco region with the support of FAO. In accordance with the PLANAL initiative, the reform should seek to guarantee sustainable processes for beneficiary populations, including through the provision of capacity-development programmes and by ensuring permanent access to basic services, including food, water and education.

E. Development, including water and health

58. Drought in the Chaco region is a cyclical phenomenon that has worsened in the past few years, leaving both indigenous peoples and smallholders with insufficient access to food and water. Even though a state of emergency has been declared every year since 2004 because of drought in the Chaco region, it is recommended that the Government of Paraguay prepare a contingency plan to be activated prior to the dry season so as to ensure the availability of potable water and food for the affected population, especially indigenous peoples. The Government should see the plan as a starting point for ensuring drinking water and food security for the indigenous and poor people of the Chaco on a permanent basis, using PLANAL as the cornerstone.

59. In accordance with their constitutional jurisdiction, both the Government of Paraguay and the governors of the relevant departments should support the

development of viable alternatives to obtain income and the creation of sustainable productive and commercial activities for indigenous peoples, including women, affected by forced labour practices.

60. The mission notes that the Ministry of Education and Culture is undertaking important initiatives to improve educational opportunities for indigenous children. The Government must also address the barriers that indigenous children face in enrolling in and attending school, expand educational services and provide adequate budgetary allocations to ensure education for all.

61. In accordance with their constitutional jurisdiction, both the Government and the governors of the relevant departments should expand coverage of health care and social security. Mobile brigades could be established and adequately funded to provide such services to indigenous communities that would otherwise lack access.

62. The Ayuda Mutual Hospitalaria law, which creates a special medical insurance system that applies only to indigenous peoples in the Chaco region, must be repealed or reformed.

63. Mennonite boards should not have any jurisdiction on social services and health-care systems for indigenous people.

64. In accordance with their constitutional jurisdiction, both the Government and the governors of the relevant departments should prioritize capacity-building for indigenous organizations, as well as the development of leadership and professional skills. Indigenous women must be included in such programmes.

65. The Government should improve the communications infrastructure in the Chaco, including by providing indigenous peoples of the region with access to radio and telephone communications.

66. The mission supports the efforts of the environmental ministry to prevent deforestation in the Chaco and calls upon the ministry to continue its efforts in this regard with the free, prior and informed consent of indigenous peoples of the region.

F. End discrimination on the basis of indigenous status

67. The Government should take effective measures in consultation and cooperation with indigenous peoples to combat discrimination against indigenous peoples.

68. The Government must repeal all discriminatory laws and practices, including, as mentioned above, the Ayuda Mutual Hospitalaria law.

69. The Government must put an end to the segregation of social services, including schools and health-care facilities.

G. Regional cooperation and cross-border strategies

70. The Governments of Paraguay and Bolivia should cooperate and share promising practices with regard to the elimination of forced labour of indigenous peoples in the Chaco regions of each country. The development of a cross-border programme for the protection of indigenous peoples of the Chaco should be considered.

71. The United Nations and bilateral aid agencies should share relevant good practices they have gathered from their experiences in different countries and should finance cross-border programmes.

H. Development of a national strategy/action plan

72. Working in cooperation and consultation with indigenous peoples, the Government and its newly formed Commission to Eradicate Forced Labour should create a national action plan on forced labour. The plan should address discrimination as the root cause of forced labour and should establish a monitoring process to ensure its implementation.

73. The Government should consider hosting a national conference on indigenous peoples to increase the visibility of indigenous issues within Paraguay and to improve coordination among Government and United Nations agencies and indigenous peoples' organizations.

I. Comply with obligations under international law

74. All branches of the Government — legislative, executive and judicial — and all its constitutional agencies, such as the Ombudsman's Office, should comply with their obligations under international laws and conventions.

75. The mission reminds the Government that, in seeking to eliminate the root causes of forced labour of indigenous peoples, it should be guided by international instruments and, in particular, the United Nations Declaration on the Rights of Indigenous Peoples, which Paraguay voted for in the General Assembly, and ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries, which was ratified by Paraguay. The mission supports the Government's intention to implement ILO Convention No. 169.

76. The mission requests the Government to take urgent action to ensure that the labour rights of indigenous peoples are respected and protected, especially the core labour standards of ILO related to freedom of association, the elimination of forced labour, the elimination of child labour and equal opportunities without discrimination, as well as the international labour standards related to social security and wages.

77. The Supreme Court of Justice and, in particular, its Constitutional Chamber, should pay greater attention to treaties and other international human rights instruments, in particular the Universal Declaration of Human Rights and ILO Convention No. 169. The Court should also be aware of constitutional problems with regard to laws that respect the right of consultation of indigenous peoples.

78. The Supreme Court of Justice and, in particular, its Constitutional Chamber, should also pay greater attention to the rulings handed down by the Inter-American Court of Human Rights concerning indigenous peoples beyond the above-mentioned cases directly concerning Paraguay.

J. Additional follow-up for the United Nations

79. The Permanent Forum should engage in a dialogue with the agencies of the United Nations in Paraguay, the goal of which should be the application of the United Nations Declaration on the Rights of Indigenous Peoples, as well as other relevant international conventions, and the implementation of the recommendations of the Permanent Forum by the relevant agencies.

80. The Permanent Forum should encourage development agencies to provide assistance to indigenous peoples of the Chaco region, including by supporting efforts to combat forced labour and to improve access to water, food and basic social services, such as health care and education.

81. The mission urges United Nations agencies to support the Ministries of Labour and Statistics in their continuing efforts to generate data on working conditions among indigenous populations.

82. The United Nations agencies in Paraguay should work together closely to address indigenous issues, including forced labour. They should also coordinate their efforts in support of the emergency facing the peoples of the Chaco due to drought and should support the Government in building a strategy for the more sustainable development of the fragile Chaco region and its indigenous peoples, starting with supporting PLANAL.